APPENDIX A

Opinion Below

UNITED STATES COURT OF APPEALS FOR THE NINTH DISTRICT

No. 16857

Feb. 13, 1961

MORROW RADIO MANUFACTURING CO., a corporation, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

On Appeal from the Judgment of the United States District Court for the District of Oregon.

Before: STEPHENS, HAMLEY and HAMLIN, Circuit Judges.

HAMLIN, Circuit Judge:

The Morrow Radio Manufacturing Company is an Oregon corporation engaged in the manufacture of radio equipment. During the period from October 1, 1955, through September 30, 1958, it manufactured and sold receivers, fixed-tuned receivers, power supply units, converters, and speakers.[1] Each article is in a separate cabinet and is sold primarily as amateur radio equipment.

---

[1] The receivers are the *Falcon* (Exhibit 9-A) and the MBR-5 (Exhibit 9-B). Both are designed to receive transmissions on the five amateur bands, and in addition the *Falcon* is designed to receive transmissions on the standard broadcast band. Neither of these units is designed as a complete radio receiving set, and neither will operate unless connected to a power supply unit, an antenna and a speaker.

The fixed-tuned receiver is the FTR (Exhibit 9-C) and is designed to receive transmissions only on a single wave length. Like the receivers, it will not operate unless connected to a power supply unit, an antenna and a speaker.

The power supply units are the RAP 250-S (Exhibit 9-D) and the RVP (Exhibit 9-E). The RAP 250-S is designed to convert

Section 4141 of the Internal Revenue Code of 1954 imposes a tax upon certain radio equipment. Morrow's contention is that it does not impose any tax on the equipment which it manufactures. The statute reads as follows:

> There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof), a tax equivalent to 10 percent of the price for which so sold:
>
> Radio receiving sets.
> Automobile radio receiving sets.
> Television receiving sets.
> Automobile television receiving sets.
> Phonographs.
> Combinations of any of the foregoing.
> Radio and television components.
> Phonograph records.
>
> Except in the case of radio and television components and phonograph records, the tax imposed by this section shall apply only to articles of the entertainment type.[2]

---

commercial voltages into voltages usable with radio receivers, and it also has a built-in speaker. The RVP converts voltages from automobile batteries into voltages usable with radio receivers. Neither one is a complete radio receiving apparatus.

The converters, namely, the 5BR, 5BR-2, 5BRLN and 5-BRF (the 5-BRF is in evidence as Exhibit 9-F), are designed for use with fixed-tuned receivers but also may be hooked into a standard broadcast receiver to make a combination shortwave and standard broadcast receiving set. It is incapable of producing sound by itself.

The speaker (Exhibit 9-G) is conceded to be a taxable component as it is capable of being used as a part of any radio receiving set.

[2] The last sentence of this section was enacted by the 84th Congress and became effective on Septemer 1, 1955 (Pub. L. No. 367, 84th Cong., 1st Sess., Aug. 11, 1955). The statute was restored to its original form by the Excise Tax Technical Changes Act of 1958, 72 Stat. 1275. The restoration became effective on January 1, 1959.

Section 4142 supplements Section 4141 by providing a definition of radio and television components:

> As used in section 4141, the term "radio and television components" means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in section 4141 whether or not primarily adapted for such use.[3]

Morrow brought suit in the United States District Court for the District of Oregon in an effort to recover $1,658.03 in excise taxes allegedly erroneously paid to the government. The United States denied that the taxes were erroneously paid and in addition counterclaimed for $10,533.60 allegedly due and owing to the government in unpaid taxes. All of the amounts involved were excise taxes assessed under the provisions of § 4141. The district court found in favor of the government on both contentions, and it is from this decision that the appellant brings this appeal.[4]

The district court found that the articles in question were not of the "entertainment type;" that they were components as defined by the statute and therefore taxable; and that the amount of the tax had been collected from the purchasers so that under the provisions of § 6416 of the

---

[3] This section was amended in 1958 to include phonograph record players within the term 'radio and television components.' The amendment was not effective until subsequent to the period covered by this case and has no bearing on the issues presented here.

[4] The opinion of the district judge is printed in *Morrow Radio Manufacturing Co.* v. *United States*, 179 F. Supp. 436 (D. Or. 1959).

Internal Revenue Code of 1954 Morrow is not entitled to recover the amounts from the government.[5]

In the first brief filed by Morrow in this appeal, it was contended that the units which Morrow manufactures are not sold as radio components, but rather that they are sold as complete radio receiving sets within the meaning of § 4141. If the contention is sound, the articles would not be subject to tax since the statute places a tax only on "components" when the articles manufactured are not of the "entertainment type."[6] The essence of this argument is that though none of the *units* is a complete radio receiving set, they are sold in groups that are complete radio receiving sets. The district judge found that this was not the case, and his conclusion is supported by the evidence. The record shows that the parts were not sold together in groups which formed radio receiving sets since (1) the purchasers from Morrow would order individual units rather than operating

---

[5] The pertinent provisions of § 6416 relating to the recovery of taxes read as follows:

> No credit or refund of any overpayment of tax is imposed by section 4231(4), (5), or (6) (cabarets, etc.), chapter 31 (retailers taxes), or chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary or his delegate, that he—
>
> (A) has not included the tax in the price of the article . . . and has not collected the amount of the tax from the person who purchased such article . . .
>
> (B) has repaid the amount of the tax . . . .

[6] The trial judge ruled that the parts manufactured by Morrow are not of the "entertainment type," and that ruling has not been attacked on this appeal.

sets;[7] (2) that certain of the parts manufactured by Morrow could be used with parts manufactured by other manufacturers in order to form radio receiving sets;[8] and (3) that there are a number of ways in which the parts manufactured by Morrow can be combined in order to form radio receiving sets.[9] Therefore the trial judge was correct in

---

[7] On cross-examination Fred J. Hart, the general manager of Morrow, testified as follows:

> Q. Is it not true, Mr. Hart, that you do sell power supplies and receivers separately on many occasions? That is true from your company's point of view regardless of what the ultimate customer does?
>
> A. Yes, we sell them separately.

[8] There was testimony which indicates that the speaker and the converter can be used with equipment manufactured by other manufacturers without the necessity of modification and that the other parts manufactured by Morrow could be used with equipment manufactured by other manufacturers after some modifications had been made.

[9] The following testimony was given by Byron L. Youtz, one of appellant's experts:

> Q. Based on your examination of Exhibits 9-A through -G and looking at each of them separately, which of those come within your definition of radio receiving sets?
>
> A. Taken separately, really none of them do.
>
> Q. Which of those, if any, in combination would constitute a radio receiving set within your definition?
>
> A. Well, there are several possible orientations. I would say that the radio receivers of Type -A or -B plus one of the power supply units which would be -D or -E, plus a speaker. Now, I might say that there are several permutations among this group. That is, power supply unit Type -D has a speaker attached to it; therefore, I could use -A and -D or -B and -D and have a radio receiving set . . . .
>
> There is one more combination that would be possible, if you want this much detail. Type -F, which I think is the converter unit, plus Type -C, the receiver plus either of the power supplies, and again if we use power supply -D we do not need an external speaker. If we use power supply -E, we do need an external speaker.

holding that Morrow was a manufacturer of components within the meaning of §§ 4141 and 4142.

In the second brief that it filed on this appeal, Morrow abandoned this argument and admitted that the radio parts are "components" as the statute defines them. However, it is now contended that the components are not "taxable components" under the definition set forth in § 4142 of the statute. This section provides that in order to be taxable the components must be "suitable for use on or in connection with, or as component parts of, any of the articles enumerated in section 4141, whether or not primarily adapted for such use."[10] Morrow now argues that the parts manufactured are not suitable for use as component parts of a radio receiving set, for they can not be joined together in a single cabinet in order to form a self-contained radio receiving set. This argument presupposes that the radio receiving sets referred to by the statute must be contained in a single cabinet. We do not feel that an examination of the present statute and its predecessors supports the position that Morrow advances. In so deciding we accept the fact that the parts which Morrow manufactures can not be combined together within a single cabinet, or at least are not suitable to be so combined.[11]

The first statute to impose a tax on radio receiving apparatus was passed in 1932.[12] The text of that statute reads as follows:

> There is hereby imposed upon the following articles, sold by the manufacturer, producer, or importer, a tax

---

[10] The only "article" in § 4141 which is referred to for the purposes of this case is "radio receiving sets."

[11] There was testimony at the trial that would indicate that the power supply unit becomes extremely hot when it is operating, and that it is not practical to combine it together with the other components in a single cabinet.

[12] Revenue Act of 1932, c. 209, 47 Stat. 169, § 607.

> equivalent to 5 per centum of the price for which so sold: Chassis, cabinets, tubes, reproducing units, power packs, and phonograph mechanisms, suitable for use in connection with or as part of radio receiving sets or combination radio and phonograph sets (including in each case parts or accessories therefor sold or in connection therewith or with the sale thereof), and records for phonographs. A sale of any two or more of the above articles shall, for the purpose of this section, be considered a sale of each separately.

The statute set forth above makes the tax applicable only to components, but neither the statute itself nor any regulations promulgated thereunder says that to be taxable the components must be capable of being used as parts of radio receiving sets contained within a single cabinet. The wording of the statute set out above corresponds very closely to the definition of components that is set out in § 4142 of the present statute.

In 1941 the taxing statute was amended and by expressly including radio receiving sets came closer to the form of the statute that is now under consideration:[13]

> There shall be imposed upon the following articles (including in each case, except in the case of musical instruments, parts or accessories thereof sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which sold:
>
> (a) Radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs.
>
> (b) Chassis, cabinets, tubes, reproducing units, power packs, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use

[13] Revenue Act of 1941, c. 412, 55 Stat. 687, § 545.

on or in connection with, or as component parts of, any of the articles enumerated in subsection (a), whether or not primarily adapted for such use.

(c) Phonograph records.

(d) Musical instruments.

The major change that the 1941 act made was the addition of the term "radio receiving sets." Subsection (b), as quoted above, retains the tax on components that was imposed by the 1932 act, and the use of terms similar to those used in the 1932 act would indicate that the Congress intended that this subsection retain the same scope that it enjoyed under the 1932 act. There is no suggestion that the components must be suitable for use on or with or as parts of radio sets contained in a single cabinet.

Section 4142 of the present code defines taxable components in almost exactly the same language that was used in the 1941 act.[14] This would indicate that the Congress again intended to allow the same scope of taxation that had been encouraged by the earlier acts. There is nothing in the statute set forth in the 1954 code to suggest that the Congress intended to redefine taxable components to mean

---

[14] The 1941 act uses the following terms:

> Chassis, cabinets, tubes, reproducing units, power packs, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a), whether or not primarily adapted for such use.

Section 4142 of the present code supplies the following definition of components:

> . . . chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in section 4141 whether or not primarily adapted for such use.

only those components that may be used as parts of radio sets that are contained in a single cabinet. There is nothing to suggest that the 1955 amendment to § 4141 was intended to effectuate such a change.[15]

This being the reasonable interpretation of the statute, we feel that the judgment of the district court must be affirmed.

In view of this holding it becomes unnecessary to decide whether Morrow is also barred from recovery by § 6416,[16] for we would reach that question only if we determined that the components manufactured by Morrow were not taxable under § 4141. The appellant contends that the district court was in error in holding that the burden of proof was upon Morrow to show that the burden of the tax had not been passed on to the purchaser of the radio equipment. We expressly refrain from passing on this issue.

The judgment of the district court is affirmed.

(Endorsed) Opinion Filed Feb. 13, 1961.

FRANK H. SCHMIDT, *Clerk*.

---

[15] See footnote 2.

[16] See footnote 5.

APPENDIX B

Judgment Below

UNITED STATES COURT OF APPEALS FOR THE NINTH DISTRICT

No. 16857

MORROW RADIO MANUFACTURING Co., a corporation, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the Judgment of the United States District Court for the District of Oregon

This cause came on to be heard on the Transcript of Record from the United States District Court for the District of Oregon

On consideration whereof, It is now ordered and adjudged by this Court, that the judgment of said
District Court
be and hereby is affirmed.

(Endorsed) Judgment

Filed and entered February 13, 1961

FRANK H. SCHMID, *Clerk*

APPENDIX C

Order Denying Rehearing

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from proceedings of: Monday, March 20, 1961

Before: Stephens, Hamley and Hamlin, Circuit Judges

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant, filed March 13,

1961 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is, denied.

APPENDIX D

Statutes and Regulations Involved

1. Internal Revenue Code of 1954 (as amended by Sec. 2(a), Act of August 11, 1955, c. 805, 69 Stat. 689):

SEC. 4141. IMPOSITION OF TAX.

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof), a tax equivalent to 10 percent of the price for which so sold:

Radio receiving sets.
Automobile radio receiving sets.
Television receiving sets.
Automobile television receiving sets.
Phonographs.
Combinations of any of the foregoing.
Radio and television components.
Phonograph records.

Except in the case of radio and television components and phonograph records, the tax imposed by this section shall apply only to articles of the entertainment type.
(26 U.S.C. 1958 ed., Sec. 4141.)

SEC. 4142. DEFINITION OF RADIO AND TELEVISION COMPONENT.

As used in section 4141 the term "radio and television components" means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of any of the articles enumerated in section 4141, whether or not primarily adapted for such use.
(26 U.S.C. 1958 ed., Sec. 4142.)

2. Treasury Regulations on Manufacturers Excise Taxes (1954 Code):

Sec. 40.4141-1 Imposition of tax.

(a) *In general.* Section 4141 imposes a tax upon the sale by the manufacturer, producer, or importer of the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof):

(1) Radio receiving sets,
(2) Automobile radio receiving sets,
(3) Television receiving sets,
(4) Automobile television receiving sets,
(5) Phonographs,
(6) Combinations of any of the foregoing,
(7) Radio and television components, and
(8) Phonograph records.

In the case of a sale of a radio receiving set, automobile radio receiving set, television receiving set, automoble television receiving set, phonograph, or any combination of the foregoing, the tax attaches only if the article is of the entertainment type. The tax attaches upon the sale of phonograph records and radio and television components without regard to whether such articles are of the entertainment type. For a description of articles of the entertainment type, see paragraph (c) of this section. For provisions relating to (i) phonograph records and (ii) parts or accessories sold on or in connection with the sale of any article specified in subparagraphs (1) to (8) of this paragraph, see paragraphs (d) and (e), respectively, of this section. For definition of the term "radio and television components", and other provisions relating thereto, see section 4142 and § 40.4142-1.

(b) *Rate of tax.* Tax is imposed upon the sale of the above-mentioned taxable articles at the rate of 10 percent of the price for which sold. For definition of the term "price", see section 4216 and the regulations thereunder.

(c) *Articles of the entertainment type*—(1) *Radio receiving sets.* (i) Except as provided in either subdivision (ii) or (iii) of this subparagraph, a radio receiving set shall be considered of the entertainment type when the circuitry of the set is such that the set can receive radio transmssions on the Standard Commercial Amplitude Modulation (AM) or Frequency Modulation (FM) broadcast frequencies. It is immaterial whether the set is designed, intended, or sold for use in a private home or a commercial establishment, such as a restaurant, retail store, etc.

(ii) A radio receiving set shall be deemed not an article of the entertainment type when it contains all of the following items and such items are incorporated in the circuitry for a functional purpose:

(*a*) A band change mechanism permitting reception on two or more short wave bands;

(*b*) A variable beat frequency oscillator or other equipment designed to receive code transmission on Continuous Wave (CW) operated by means of a "front panel" control;

(*c*) A fine tuning or band spread or Vernier tuning mechanism that is calibrated with a subdividing logging scale;

(*d*) Provisions for earphones;

(*e*) A meter incorporating a moving coil or armature indicating relative field strength of the signal received; and

(*f*) A primary conversion oscillator, the frequency of which is controlled by a quartz crystal oscillator.

(iii) A radio receiving set of the type designed and manufactured primarily for the performance of communication, navigation, or detection services for industrial, commercial, marine, or governmental use generally may be considered not of the entertainment type. Services coming within the scope of the preceding sentence include, but are not limited to, safety, transportation, or disaster.

(2) *Television receiving sets.* A television receiving set shall be considered of the entertainment type when the circuitry of the set is such that it can receive television transmissions on the Standard Commercial Ultra High Frequency (UHF) or Very High Frequency (VHF) channels. It is immaterial whether the set is designed, intended, or sold for use in a private home or a commercial establishment, such as a restaurant, retail store, etc. A television receiving set which has incorporated in its circuitry for a functional purpose all the features described in subparagraph (1) (ii) of this paragraph is deemed not an article of the entertainment type. A television receiving set designed and manufactured primarily to perform any of the services listed in subparagraph (1) (iii) of this paragraph generally may be considered not of the entertainment type.

(3) *Phonographs.* A phonograph shall be considerd of the entertainment type if it is designed to reproduce sounds from phonograph records (as defined in paragraph (d) of this section). It is immaterial whether the phonograph is designed, intended, or sold for use in a private home or a commercial establishment, such as a restaurant, retail store, etc.

(d) *Phonograph records.* The term "phonograph records" means all disks, cylinders, or other articles, regardless of the material from which they are made, upon which are recorded music, speech, or other sounds which are capable of reproduction by means of a phonograph, re-

gardless of whether such records are or are not of the entertainment type. The term does not include tape or wire recordings.

(c) *Parts or accessories.* The tax attaches in respect of parts or accessories sold on or in connection with the sale of a radio receiving set, automobile radio receiving set, television receiving set, automobile television receiving set, phonograph, or any combination of the foregoing which is of the entertainment type (as defined in paragraph (c) of this section). The tax attaches in respect of parts or accessories sold on or in connection with the sale of phonograph records or radio and television components (see section 4142 and § 40.4142-1) without regard to whether such records or components are suitable for use on or in connection with an article of the entertainment type. Tax is not imposed in respect of parts or accessories sold separately by the manufacturer, producer, or importer, that is, not sold on or in connection with the sale of any radio or television receiving set, phonograph, any combination of the foregoing, or any phonograph record, or radio or television component.

Sec. 40.4142-1 Radio and television components.

(a) *In general.* The term "radio and television components" means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, and phonograph mechanisms. However, an article specified in the preceding sentence constitutes a radio or television component, for purposes of the tax imposed by section 4141, if it is suitable for use on or in connection with, or as a component part of, any radio receiving set, automobile radio receiving set, television receiving set, automobile television receiving set, phonograph, or a combination of the foregoing, without regard to whether such set, phonograph, or combination is of the entertainment type.

(b) *Suitable for use defined.* Radio or television components are suitable for use, within the meaning of section 4142 and paragraph (a) of this section, if the components are commonly used with any of the articles enumerated in section 4141 and paragraphs (a) (1) to (6) of § 40.4141-1 or if the components possess actual, practical commercial fitness for such use. It is immaterial whether the radio or television component is primarily adapted for such use.

(c) *Definitions*—(1) *Chassis.* The term "chassis" includes any assembly of parts into circuits for the reception and conversion of radio or television signals into impulses suitable for the reproduction of (i) sound by a radio receiving set, or (ii) a picture, either with or without its associated sound, by a television receiving set.

(2) *Cabinets.* The term "cabinets" includes containers suitable for housing a chassis for any radio or television receiving set, phonograph, or any combination of the foregoing.

(3) *Tubes.* The term "tubes" includes tubes of all types suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing.

(4) *Speakers.* The term "speakers" includes all devices for use in converting electrical impulses to sound whether or not equipped with coupling units (but not including earphones) which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing.

(5) *Amplifiers.* The term "amplifiers" includes all apparatus for the amplification of audio frequency or video frequency impulses which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing.

(6) *Power supply units.* The term "power supply units" includes all devices which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing and which convert electric current of ordinary commercial and domestic voltages into electric current voltages suitable for operating any such articles.

(7) *Antennae of the "built-in" type.* The term "antennae of the 'built-in' type" includes all types of aerials designed to be contained in any radio or television receiving set, or combination of the foregoing.

(8) *Phonograph mechanism.* A "phonograph mechanism" is a combination of a motor, pick-up arm, and turntable. A pick-up cartridge or record changer sold on or in connection with a phonograph mechanism is a part or accessory for the phonograph mechanism.

APPENDIX E

Revenue Ruling 56-388

(1956-2 Cumulative Bulletin 808)

Applicability of manufacturers excise tax, imposed by section 4141 of the Internal Revenue Code of 1954, to the sale, by a distributor, of certain units of radio, television or phonograph equipment in a group but without a common cabinet.

Advice has been requested concerning the applicability of the manufacturers excise tax to certain sales, by a distributor, of record players, amplifiers, speakers, and radio and television tuners, for installation in homes where the cabinets are already a part of the house design or furniture.

The above-named articles are designed to be sold separately, but in order to serve their purposes they are so

constructed that they may be plugged into one another. Most of the articles have individual housings or cabinets. Any which are themselves taxable are purchased by the distributor on a tax-paid basis. They are sold by the distributor in the same packages in which they were received from the manufacturer, without further processing or assembling. The articles may be sold as separate units, or they may be sold in groups, such as (1) a record player, amplifier and speaker, (2) a record player, amplifier and radio tuner, or (3) a record player, amplifier, radio tuner and television tuner. Such a group sale does not include the sale of a common cabinet into which the units may be incorporated.

Section 4141 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer of certain articles, including radio receiving sets, television receiving sets, phonographs, and combinations of any of the foregoing. By virtue of the amendment of that section by Public Law 367, 84th Congress, 69 Stat. 689, C.B. 1955-2, 768, effective September 1, 1955, the tax applies to the sale by the manufacturer of these articles *only if they are of the entertainment type.*

Prior to September 1, 1955, section 4220 of the Code provided that no manufacturers excise tax shall be imposed with respect to the sale of any article for use by the vendee as material in the manufacture or production of, or as a component part of, an article subject to the tax. Under the law as amended by Public Law 367, an exemption from the manufacturers excise tax is provided for certain taxable components, including radio or television components, used or sold on and after September 1, 1955, for use as material in the manufacture or production of, or as a component part of, any article, whether or not such article is subject to the manufacturers excise tax. The manufacturer or producer to whom an article is sold or resold tax-free under these provisions shall be considered the manufacturer or producer of such article.

Section 316.4 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954-2, 47, provides that the term "manufacturer" includes a person who produces a taxable article by combining or assembling two or more articles, and further provides that a manufacturer who sells a taxable article in a knockdown condition, but complete as to all component parts, is liable for the tax.

It is held that a distributor who purchaser separate units, such as a record player, amplifier, speaker, and tuner, and resells them without a common cabinet is not a manufacturer of a taxable radio or television receiving set or phonograph and is not subject to the tax imposed by section 4141 of the Code, regardless of whether the articles are sold separately or in groups, and regardless of whether they are interconnected and installed in the purchaser's home. However, anyone first associating and selling a common cabinet with a group of units which collectively may be regarded as constituting a radio receiving set, a television receiving set, a phonograph, or a combination of any of the foregoing, is a manufacturer within the meaning of the law and is liable for the tax on the sale of any such group of articles either in a knockdown condition or assembled in the cabinet. Such a person would be entitled, under the provisions of section 6416(b)(3) of the Code and section 316.204 of Regulations 46, to a credit in the amount of tax already paid by the manufacturers of any of the components which were themselves subject to tax. Prior to September 1, 1955, the credit is allowable under section 6416(b)(3)(A). With respect to components used on and after that date for further manufacturer, the credit is allowable under section 6416(b)(3)(B), as amended.

APPENDIX F

Treasury Regulations on Manufacturers Excise Taxes (effective January 1, 1959):

Sec. 48.4141-2 Parts or Accessories.

(a) *In general.* The tax attaches in respect of parts or accessories for articles specified in section 4141 and paragraph (a) of § 48.4141-1 sold on or in connection with the sale thereof at the rate applicable to the sale of the basic articles. The tax attaches in such case whether or not the parts or accessories are billed separately. On the other hand, no tax attaches in respect of parts or accessories for articles specified in section 4141 and paragraph (a) of § 48.4141-1 which are sold otherwise than on or in connection with such articles or with the sale thereof.

(b) *Essential equipment.* If taxable articles are sold by the manufacturer, producer, or importer thereof without parts or accessories which are considered equipment essential for the operation or appearance of such articles, the sale of such parts or accessories will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the basic article even though they are shipped separately at the same time or on a different date.

Sec. 48.4142-1 Radio and Television Components.

(a) *In general.* The term "radio and television components" means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, phonograph mechanisms, and phonograph record-players, which are suitable for use on or in connection with, or as a component part of, any radio or television receiving set, phonograph, or combination of any of the foregoing.

(b) *Suitable for use defined.* An item is suitable for use, within the meaning of section 4142 and paragraph (a) of this section, if it is commonly used with any of the articles enumerated in section 4141 and paragraph (a) (1) through (6) of § 48.4141-1 or if it possesses actual, practical commercial fitness for such use. It is immaterial whether the item is primarily adapted for such use